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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

8 Ramon Garcia,

9 Petitioner,

10 vs.

11 Katrina Kane,

12 Respondent.

) No. CV 08-0341-PHX-SMM (MHB)

) **ORDER**

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15 Petitioner Ramon Garcia (A92-826-918), who is confined in the Eloy Detention

16 Center in Eloy, Arizona, has filed a *pro se* Petition for Writ of Habeas Corpus Pursuant to

17 28 U.S.C. § 2241. The filing fee has been paid. The Court will require Respondent to

18 answer the Petition.

19 **I. Petition**

20 On April 30, 2007, an immigration judge entered an order for Petitioner's removal

21 from the United States. On January 30, 2008, the Board of Immigration Appeals dismissed

22 Petitioner's appeal. Petitioner's petition for review is currently pending before the United

23 States Court of Appeals for the Ninth Circuit. See Garcia v. Mukasey, No. 08-70477 (9th

24 Cir. pet. for review filed Feb. 5, 2008). On February 5, 2008, the Ninth Circuit granted

25 Petitioner a temporary stay of removal pursuant to Ninth Circuit General Order 6.4(c)(1).

26 Id. Petitioner alleges that he has been detained by Immigration and Customs Enforcement

27 since January of 2007. Petitioner argues that his continued detention while his removal

28 proceedings have been pending is unlawful.

1 The REAL ID Act of 2005 does not deprive the Court of jurisdiction because the Act
 2 was “not intended to ‘preclude habeas review over challenges to detention that are
 3 independent of challenges to removal orders.’” Hernandez v. Gonzales, 424 F.3d 42, 42-43
 4 (1st Cir. 2005) (quoting H.R. Cong. Rep. No. 109-72, at 2873 (2005)); See also Nadarajah
 5 v. Gonzales, 443 F.3d 1069, 1075 (9th Cir. 2006) (“By its terms, the jurisdiction-stripping
 6 provision [of the REAL ID Act] does not apply to federal habeas corpus petitions that do not
 7 involve final orders of removal.”). An answer will therefore be required.

8 **II. Warnings**

9 **A. Address Changes**

10 Petitioner must file and serve a notice of a change of address in accordance with Rule
 11 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion for other
 12 relief with a notice of change of address. Failure to comply may result in dismissal of this
 13 action.

14 **B. Copies**

15 Petitioner must serve Respondent, or counsel if an appearance has been entered, a
 16 copy of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a
 17 certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Petitioner also
 18 must submit an additional copy of every filing for use by the Court. LRCiv 5.4. Failure to
 19 comply may result in the filing being stricken without further notice to Petitioner.

20 **C. Possible dismissal**

21 If Petitioner fails to timely comply with every provision of this Order, including these
 22 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
 23 963 F.2d 1258, 1260-61 (9th Cir. 1992) (district court may dismiss action for failure to
 24 comply with any order of the Court).

25 **IT IS ORDERED:**

26 (1) The Clerk of Court must serve a copy of the Summons, Petition and this Order
 27 upon the United States Attorney for the District of Arizona by certified mail addressed to the
 28 civil process clerk at the office of the United States Attorney pursuant to Rule 4(i)(1)(A) of

1 the Federal Rules of Civil Procedure. The Clerk of Court also must send by certified mail
2 a copy of the Summons, Petition and this Order to the United States Attorney General
3 pursuant to Rule 4(i)(1)(B) and to Respondent pursuant to Rule 4(i)(2).

4 (2) Respondent must answer the Petition within 20 days of the date of service.
5 Respondent must not file a dispositive motion in place of an answer without first showing
6 cause as to why an answer is inadequate.

7 (3) Petitioner may file a reply within 20 days from the date of service of the
8 answer.

9 (4) The matter is referred to Magistrate Judge Michelle H. Burns pursuant to Rules
10 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a report and
11 recommendation.

12 DATED this 17th day of April, 2008.

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16 Stephen M. McNamee
17 United States District Judge
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